

RE: Burlington Broadcasters, Inc., L.U.P. #4C0901 (Revocation Petition),
Chair's Status Conference Report and Continuance Order (Sep. 24, 1997)

VERMONT ENVIRONMENTAL BOARD
10 V.S.A. ∞ 6001 - 6092

RE: Burlington Broadcasters, Inc. D.R. Request # 322
d/b/a WIZN &

NYNEX Mobile Limited Partnership 1 D.R. Request # 323
d/b/a Bell Atlantic NYNEX Mobile &

Contel Cellular of Vermont #4C0901 (Revocation Petition)

CHAIR'S STATUS CONFERENCE REPORT
AND CONTINUANCE ORDER

On September 15, 1997, Environmental Board ("Board") Chairman John T. Ewing convened a prehearing status conference ("status conference") in the above referenced proceedings. Present at the status conference were the following persons:

John Cain, Esq. for Petitioner, Burlington Broadcasters, Inc. d/b/a WIZN ("WIZN") Brian Sullivan, Esq. for Petitioner, NYNEX Mobile Limited Partnership 1 d/b/a Bell Atlantic NYNEX Mobile ("BANM") Gerald Tarrant, Esq. for Revocation Petitioners Mary Beth and Graeme Freeman

Thomas Heilmann, Esq., counsel for the Charlotte Volunteer Fire and Rescue Services, Inc. ("CVF&R"), indicated that he would not be able to attend the status conference due to a previous commitment. Attorney Heilmann filed a letter with the Board on September 10, 1997, stating that his client would adopt the positions taken by BANM and NYNEX regarding the appropriateness of enlarging the continuance, and therefore, had no objection with the conference proceeding on the 15th.

During the status conference, the attorneys present explained the progress of several ongoing court proceedings and administrative actions involving the CVF&R communications tower and its associated apparatus ("Charlotte Tower"). In addition, the attorneys elaborated upon the positions they had set forth in the written memoranda which had previously been filed.

In determining whether to enlarge the continuance and therefore further delay activity relative to the above-referenced proceedings, the pending

application before the District #4 Commission is the key to triggering further activity at the Board level. The above-referenced matters were initially continued to allow WIZN to seek a permit from the District Commission. WIZN has diligently sought to obtain a permit and the time frame for the Commission's action on the permit application has been protracted for reasons beyond WIZN's control. I understand that parties were to have submitted proposed findings of fact, and conclusions of law with the Commission not later than September 23, 1997. Therefore, a determination by the Commission on Application #4C0901 is now imminent.

In choosing whether or not to proceed with D.R. Request #322, each of the following may inform WIZN's decision: (1) the Commission's decision whether to grant or deny a permit; (2) any parties' decision to appeal the Commission's decision, and (3) if the matter is appealed, the Board's decision whether to grant or deny a permit. At this stage, therefore, an adjudication of legal issues raised in D.R.'s #322 and #323 should be further continued until at least the date of issuance of the Commission's decision plus 45 days. A subsequent status conference may be warranted at that time if a permit is issued and an appeal is taken or if the permit application is denied (or issued with conditions not agreeable to WIZN) and the applicant appeals to the Board. If a subsequent status conference is held due to the occurrence of any of the above-noted contingencies, it may be appropriate for the Board and the parties to consider whether consolidation of any of the several actions then before the Board would be appropriate.

With respect to the revocation matter, a continuance is also warranted at least until such time as the Commission issues its decision and any appeals are taken. Notwithstanding the independent concerns over the propriety of the notice that was given in conjunction with the Contel Cellular application, the Board finds that many of the issues raised by the Revocation petitioners concern whether the "project" as a whole conforms with the criteria of Act 250.

Finally, it bears emphasizing that the Chair's decision whether, or in which manner, to proceed with revocation proceedings is linked more directly to the eventual decision of the District Commission and the scope of any appeal taken therefrom, than to the pending appeal before the 2nd Circuit which all parties agree will not be decided for quite some time. Assuming the Board determines that it would be appropriate to commence a revocation proceeding after evaluating the District Commission's decision and any associated appeals, it will do so under the present state of the law regarding radio frequency interference (RFI) as espoused by the federal District Court in the matter *In re: Appeal of Graeme and Mary Beth Freeman, et al.* Docket No. 2:96-CV-295 (D.Vt) (August 11, 1997).

II. ORDER

1. The Board will hold in abeyance any and all activity relative to Declaratory Ruling Requests #322 and #323 as well as the revocation request filed by Mary Beth and Graeme Freeman, until 45 days after the issuance of a decision by the District #4 Environmental Commission.
2. After such time, the Board will schedule a status conference to determine whether actions then pending before the Board warrant consolidation, further continuances, or both.
3. Should any party object to this Order, such objection shall be filed not later than October 4, 1997. In the event that an objection is filed, the full Board will consider these issues based upon written memoranda at its October 22, 1997 Board meeting. The Board will consider any memoranda that were filed on or before September 9, 1997, in preparation for the September 15, 1997 status conference. In addition, supplemental memoranda that are filed not later than 4:30 p.m. on Tuesday, October 14, 1997 will be considered by the full Board.

Dated at Montpelier this 24th day of September, 1997.

ENVIRONMENTAL BOARD

s/s/ John T. Ewing

John T. Ewing, Chair